

Applicant traverses the Office Action allegation that the mention of '769.6 application in the Specification constitutes an admission of "prior art". The Specification merely refers to the description contained in the '769.6 application and does not characterize the '769.6 application as "prior art". That is, the Specification does not admit that the '769.6 application constitutes "prior art" against the present application.

Moreover, the '769.6 application is believed to have not published as a published patent application or otherwise. Furthermore, it is believed that the earliest publication of a patent application that claims priority to the '769.6 application was published on May 14, 1998. The present application claims priority to Application No 197 42 495.3, filed in the Federal Republic of Germany on September 26, 1997. A certified translation of Application No 197 42 495.3, from which the present application claims priority, is enclosed herewith. It is therefore respectfully submitted that the '769.6 application does not constitute "admitted prior art" and does not constitute prior art against the present application under any subsection of 35 U.S.C. § 102. Accordingly, a rejection of any claim of the present application under 35 U.S.C. § 103 cannot be based on the '769.6 application. Withdrawal of this rejection is therefore respectfully requested.

As further regards claim 20, the Office Action asserts that "a search signal contains a serial number stored in a memory is well known in the art." Applicant respectfully traverses these contentions to the extent that they are maintained and request that the Examiner provide specific evidence to establish those assertions and/or contentions under 37 C.F.R. § 1.104(d)(2) or otherwise. In particular, it is respectfully requested that the Examiner provide an affidavit and/or that the Examiner provide published information concerning these assertions. This is because this rejection is apparently being based on assertions that draw on facts within the personal knowledge of the Examiner, since no support was provided for these otherwise conclusory and unsupported assertions. (See also M.P.E.P. § 2144.03).

Moreover, judicial or official notice that is based on subjective and unsupported reasoning will not sustain an obviousness rejection. In the M.P.E.P. cited case of In re Ahlert, 165 U.S.P.Q. 418, 420-21 (C.C.P.A. 1970)), the Court made plain that:

Assertions of technical facts in areas of esoteric technology must always be supported by citation to some reference work recognized as standard in the pertinent art and the appellant given, in the Patent Office, the opportunity to challenge the correctness of the assertion or the notoriety or repute of the cited reference. **Allegations concerning specific "knowledge" of the prior art, which might be peculiar to a particular art should also be supported and the appellant similarly given the opportunity to make a challenge.**

In re Ahlert, 165 U.S.P.Q. at 420 to 21 (citations omitted).

Otherwise, if the Examiner cannot provide either references or an affidavit to support these contentions, it is respectfully requested that the rejection of claim 20 under 35 U.S.C. § 103 be withdrawn for this reason alone.

III. Rejection of Claims 16 to 18 Under 35 U.S.C. § 103(a)

Claims 16 to 18 were rejected under 35 U.S.C. § 103(a) as unpatentable over the '769.6 application and Pogue, Jr. et al. in view of U.S. Patent No. 5,144,667 ("Paneth et al."). Applicant respectfully submits that the combination of the '769.6 application, Pogue, Jr. et al. and Paneth et al. does not render obvious claims 16 to 18 for the following reasons.

As more fully set forth above, the Specification of the present application does not characterize the '769.6 application as constituting "prior art" and does not admit that the '769.6 application constitutes "prior art." Furthermore, as also set forth above, the '769.6 application is believed to have not published as a published patent application or otherwise. Moreover, it is believed that the earliest publication of an application that claims priority to the '769.6 application was published on **May 14, 1998**. The present application claims priority to German Application No. 197 42 495.3, filed on **September 26, 1997**. A certified copy of German Application No. 197 42 495.3 is enclosed herewith.

Accordingly, it is respectfully submitted that the '769.6 application does not constitute prior art against the present application under any subsection of 35 U.S.C. § 102 and therefore cannot be used to reject any claim of the present application under 35 U.S.C. § 103. Withdrawal of this rejection is therefore respectfully requested.

IV. Conclusion

It is respectfully submitted that all pending claims are allowable. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

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Dated:

April 16, 2003

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